

What Is A Land Trust

First, what is a land trust

Trustee holds title to a property for the benefit of the beneficiary.

The beneficiary has the power to direct the Trustee under the terms of the trust.

Trustee manages and deals with the property directly under the direction of the beneficiaries.

Similar to Illinois land trust

Like a Living Trust

"inter vivos" trust

purpose of handling personal or real property.

transfer all of the property that you own to yourself "as Trustee" of your living trust.

"Robert Johnson, as Trustee of the Robert Johnson Revocable Living Trust Dated December 13th 2020."

You are Trustee of your property for yourself while you are alive and you appoint a Trustee to take over the trust when you die.

Avoid estate transfer taxes.

You don't own any property when you die, your trust owns the property

Trust automatically transfers to another party upon your death.

New Trustee is usually one of your heirs.

This is close to a Land Trust but not the same.

Land trust is an "inter vivos" trust

land trust is designed specifically for real estate

land trusts are mainly used as an asset protection too

you usually appoint someone else to be the Trustee of your property so that your name does not show on public record

Like a Personal Property Trust.

A land trust or personal property trust is so that one person can hold the title to a property for the benefit of another.

A land trust property is shielded from judgments and liens that are against the beneficiaries or may come against the beneficiaries.

The property is easy to transfer the property to another by way of only a signature and the assignment does not even have to be notarized to be legal.

Benefits Of Using land Trusts

hide a due-on-sale clause violation.

Gam-St. Germain Act, federal law, a lender cannot call a loan due when it is a transfer into an inter-vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property

Lender cannot call the loan due because the transfer is into an inter-vivos trust in which the borrower is and remains a beneficiary.

Seller of the property then transfers their beneficial interest to the investor.

It is not recorded of record.

There is no due on sale violation jail, it is a civil matter.

Avoid Chain Of Title And Seasoning Issues

Keep A Low Profile On Public Records

Only the trust name appears on the deed in public record\

A Trustee is not required to disclose who the beneficiaries of the trust are unless ordered to do so by a court.

No Tax Consequences

The IRS considers a land trust as a "disregarded entity".

Will not be required to file a tax return.

It is easy to transfer the interest in a trust

Beneficial interest in a trust is considered to be personal property and not real property.

The transfer does not need to be witnessed or notarized, nor does the assignment get recorded.

Keep Sales Price Secret

Recorded deeds have a documentary stamp tax on the sale

Save Title Insurance Premiums

he actual title to the property does not transfer, only the beneficial interests in the trust transfers.

Avoid Litigation

can help you avoid litigation all together if someone is thinking of suing you.

Attorneys look for your assets.

it may be difficult for the suing party to find a lawyer to even take the case on a contingency fee basis because the attorney must see a way to get paid.

Avoid Liens And Judgments Against The Property

if a beneficiary gets a judgment or lien against them it will not attach to the property held in the land trust.

You can protect the property from liens and judgments against the seller until the title to the property is transferred to you.

Limits Liability For Debts

There are situations where a land trust can protect you from the liability of the debt against the trust property as well.

Avoiding Liability

Say a Trustee executes mortgage documents. With a mortgage signed by a Trustee this limits the lenders security to being only against the property and the trust. No deficiency judgment can be issued against the beneficiary personally.

Helps Property Management

All agreements related to the property must be signed in the name of the Trustee for the trust. Your name does not show on the lease and you can act like you are only the property manager.

Eviction will be filed by the Trustee. This helps to eliminate a personal confrontation between you and the tenant.

You can tell the tenant that the Trustee will be raising rents \$50 a month and that you as the property manager thought the tenant would raise a fuss.

Avoiding Problems Between Multiple Owners/Beneficiaries

The death, financial problems, or divorce of a partner in real estate can be devastating to an investment. It only effects that particular beneficiary's interest.

A beneficiary's agreement should always be filled out.

Avoid Probate And Estate Taxes

Not only can land trusts avoid probate on your real estate but it can help you avoid estate taxes, if set up properly.

Disadvantages Of Using Land Trusts

You might run into a title company here or there who isn't well enough versed on what they are.

Can also become a small stumbling block when refinancing the property that is in the trust.

You can avoid a bank problem by taking the property into your own name at the closing when you refinance and transfer the property back into the trust after closing.

The Garn St Germain act allows inter vivos transfer for estate planning purposes

The Documents Involved

- * Warrantee Deed To Trustee
- * Trust Agreement

- * Beneficiaries Agreement
- * Assignment of Beneficial Interest
- * Letter Of Direction To Trustee
- * Resignation Of Trustee
- * Notice Of Termination Of Trustee
- * Affidavit Of Resignation & Appointment Of Successor Trustee
- * Trustee's Affidavit